PRINCIPLES FOR WILDERNESS MANAGEMENT IN THE CALIFORNIA DESERT

A Response to Transition Task #28;

Develop a consistent management policy for DOI in managing California Desert Wilderness.

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CHAPTER I. SECURING AN ENDURING RESOURCE OF WILDERNESS

It is the intent of the Federal land managers of the California Desert to secure for the American people of present and future generations an enduring <u>resource</u> of wilderness, composed of those Federal lands in the California Desert designated by Congress as "wilderness areas."

The California Desert Protection Act designated 69 new wilderness areas, approximately 3.6 million acres, primarily administered by the Bureau of Land Management. Three of the wilderness areas are partially managed by the U.S. Forest Service, comprising approximately 100,000 acre. The National Park Service now administers 3.9 million wilderness acres in three units of the National Park System. The Fish and Wildlife Service gained 9,000 acres of wilderness in two refuges.

Wilderness areas shall be administered for the use and enjoyment of the American people in such manner as will leave them unimpaired for future use and enjoyment as wilderness. The areas designated by Congress as wilderness in the California Desert are to be managed to retain their "...primeval character and influence, without permanent improvements or human habitation,...protected and managed so as to preserve...natural conditions."

Wilderness designation generally provides the most protective form of Federal land management requiring difficult decisions to ensure that the intent of the Wilderness Act is met: "to preserve...natural conditions," and "outstanding opportunities for solitude or a primitive and unconfined type of recreation." Where the Wilderness Act, or any other law, including the California Desert Protection Act, makes any exceptions to the general prohibitions in the Wilderness Act, the managers undertake to implement such exceptions consistently, judiciously and thoughtfully. Where wilderness characteristics of primeval character have been degraded, the managers pledge to restore the area, where feasible, to a condition, that "...generally appears to have been affected primarily by the forces of nature."

Lastly, the managers will commit to develop common procedures that apply to all wilderness areas managed by each Federal agency, to the greatest extent legally permissible.

CHAPTER II. THE WILDERNESS ACT AND SPECIFIC PROHIBITIONS

The Wilderness Act (16 U.S.C. 1133(c)) specifically prohibits certain activities on wilderness lands, no matter which Federal agency administers the lands. Federal agencies, by regulation and policy, may not permit such activities on their lands, except for the special provisions of the Wilderness Act or other statutes.

The Wilderness Act specifically prohibits:

- * commercial enterprises;
- * permanent roads;
- * temporary roads;
- * motor vehicles:
- * motorized equipment;
- * motorboats;
- * landing of aircraft;
- * any form of mechanical transport, and
- * structures or installations.

Note that the above prohibitions do not apply to those who possess "existing private rights" e.g. valid mining claims, inholdings or rights-of-way within wilderness. "Existing private rights" is the first, and major, exception to the Wilderness Act prohibitions and this exception applies to the wilderness areas in the California Desert. Other exceptions are discussed in Chapters III and IV.

In addition to the Wilderness Act prohibitions, Federal agencies may impose other prohibitions on Federal lands that are within wilderness under each agency's specific statutory authorities. It is a fundamental premise of the Wilderness Act that the designation of Federal lands as "wilderness" does not remove the lands from the National Forest System, public lands or National Refuge System, National Park System, or from the laws and agencies that govern those systems (16 U.S.C. 1133(a)).

CHAPTER III. MINIMUM REQUIREMENTS FOR ADMINISTRATION OF THE AREA

The Wilderness Act provides a second major exception to the prohibitions listed in Chapter II. The Wilderness Act at 16 U.S.C.1133(c) states that "except as necessary to meet minimum requirements for the administration of the area for the purposes of this Act (including measures required in emergencies involving the health and safety of persons within the area) there shall be no temporary road, no use of motor vehicles, motorized equipment, or motorboats, no landing of aircraft, no other form of mechanical transport, and no structure or installation..." Note that the "minimum requirement" exception can never be used to allow a commercial enterprise or a permanent road in a wilderness area. A backcountry patrol station, fire lookout, a radio repeater, an helicopter rescue of an injured person, or a chainsaw may all be permitted in a wilderness only if such use is determined through a documented decision process, such as NEPA, to be the "minimum requirement for the administration of the area" for wilderness purposes.

Federal land managing employees often speak of "minimum tool." That term is shorthand for this provision of the Wilderness Act and applies only to agency administrative activities for wilderness.¹

There has been a disparity between Federal agencies on applying the exception of "minimum requirements for the administration of the area for the purpose" of wilderness. The decision to permit administrative activities that are the minimum requirements remains the decision of each unit manager. However, the Desert managers, through collective communication, will build on a foundation of good decisions that protect both physical resources and the wilderness character of the area.

Federal agencies also seek to govern activities by those who possess "private existing rights" in wilderness (e.g. a right-of-way holder) or an authorized user (e.g. a grazing allottee) under the "minimum tool" policy. Strictly speaking, the prohibitions in 16 U.S.C. 1133(c) DO NOT APPLY to those with "private existing rights" within designated wilderness. However, the agencies are nonetheless obligated to permit the exercise of "private existing rights" so as to minimize the damage to Federal wilderness areas. It is in this context that use of the term "minimum tool" must be understood.

CHAPTER IV. SPECIAL PROVISIONS IN THE WILDERNESS ACT

Congress incorporated into the 1964 Wilderness Act several "special provisions," or exceptions. Since the 1964 Wilderness Act involved only national forest lands, the exceptions were originally applicable only to national forest wilderness areas. The "special provisions" are:

- * aircraft or motorboat use where they were established (16 U.S.C. 1133(d)(1));
- * measures for control of fire, insects and diseases (16 U.S.C. 1133(d)(1));
- conduct of mineral surveys (16 U.S.C. 1133(d)(2));
- * location of mining claims until the end of 1983 (16 U.S.C. 1133(d)(3));
- * continued mineral leasing until January 1, 1984 (16 U.S.C. 1133(d)(3));
- * water project development with Presidential approval (16 U.S.C. 1133(d)(4));
- * continuation of existing grazing (16 U.S.C. 1133(d)(4));
- * retention of state authority over wildlife management (16 U.S.C. 1133(d)(7);
- * guarantee of adequate access to non-federal lands surrounded by wilderness (16 U.S.C. 1134(a)), and
- * customary ingress and egress to mining claims and other occupancies surrounded by wilderness (16 U.S.C. 1134(b)).

Several of the above "special provisions" apply specifically to wilderness in "national forests." Others of the "special provisions" apply to the Secretary of Agriculture. The exceptions that apply to "national forest" wilderness and to the Secretary of Agriculture also apply to wilderness managed by the BLM under the terms of the Federal Land Policy and Management Act (FLPMA) at 43 U.S.C. 1782(c).

Individual acts establishing wilderness in National Park System units, including the California Desert Protection Act at Section 603, contain language that is similar to the following:

The wilderness areas designated by this Act shall be administered by the Secretary of the Interior in accordance with the provisions of the Wilderness Act governing areas designated by that Act as wilderness areas, and where appropriate, any reference in that Act to the Secretary of Agriculture shall be deemed to be a reference to the Secretary of the Interior.

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The Associate Solicitor, Conservation and Wildlife, wrote to the NPS Director on February 26, 1975 stating that "...an (NPS wilderness) act containing this language causes Wilderness Act sections" that apply to the Secretary of Agriculture "...to be made applicable to the (National Park System) area designated as wilderness." However, the memo explains that special provisions applicable to "national forest" wilderness are not applicable to national park system wilderness. See the chart on the next page for applicability of each "special provision."

1964 WILDERNESS ACT (Public Law 88-577) Table 1

EXCEPTIONS TO PROHIBITIONS OF WILDERNESS ACT	CITATIONS	BLM	FS	FWS	NPS
To meet the minimum requirements for the administration of area including emergencies involving health/safety of persons.	4(c)	•	*	*	*
Aircraft or motorboat use, where established	4(d)1	*	*	*	*
Control fire, insects, and diseases	4(d)1	•	•	•	•
Gathering information about mineral or other resources	4(d)2	•	*		
Claim location, mineral leasing until 12/31/83 or designation	4(d)3	*	*		
Federal water projects allowed by the President	4(d)4(1)	*	*		
Grazing of livestock, where established, may continue	4(d)4(2)	•	•		
Boundary Water Canoe Area	4(d)5		•		
Commercial Services for wilderness purposes	4(d)6	*	•	*	
Neutral with regard to State Water low	4(d)7		•	•	*
Neutral with regard to State wildlife jurisdiction	4(d)8	*	•		
Adequate Access to private and State lands	5(a)	*	•		
Ingress and egress to claims	5(b)	•	•		

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CHAPTER V. THE SPECIAL PROVISIONS OF THE CALIFORNIA DESERT PROTECTION ACT AND THEIR EFFECT UPON WILDERNESS

Each unit of the National Wilderness Preservation System is governed by the laws that govern the national forests, national wildlife refuges, national parks or public lands and by the Wilderness Act. Finally, each wilderness area is ultimately governed by the provisions of the Act that established the area as wilderness.

The California Desert Protection Act, Titles I, II and VI, designate wilderness areas to be administered by the BLM, Forest Service, Fish and Wildlife Service and the NPS. The Act contains several provisions that apply to wilderness. Some of the provisions do not apply equally to all wilderness created by the Act. Others of the provisions are applicable to all wilderness.

Some of provisions are unique in the history of wilderness designations by Congress. The chart on the following page lists the provisions of the California Desert Protection Act that affect wilderness in the California Desert.

CALIFORNIA DESERT PROTECTION ACT OF 1994 (Public Law 143-433)

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Access for Inholdings	80 <i>L</i>	807	807	90 L	807	30L	807
State School Lands Exchange	202	TOT	LOL	LOL	LOL	LOL	LAL
Federal Reserve Water Rights	904	904	904	30 L	ul	plicit water	rhghts
Mative American Uses & Interests	705(=)	(=)207	105(4)	(w) \$0L	(#)\$OZ	792(8)	705(#)
Lend Tenure Adjustment Priority	ZOL	207	207	207	70 L	207	707
Utility Rights-of-Ways						701	118
Mineral Validity Examinations				605			605
Wall BalaiM 19ball IwanbaliW	(B)£01	(a)£01		LOS/50+/50E	308	\$07	LOS
No Reserved Water Rights in Colerado River			PRZ				
Colorado River Upper Basin	203	, 503	203	£0Z	203	707	203
Colorade River dams			797				
iasanyolail wa.l	103(8)	(8)£01					
Fish and Wildlife Management	103(0)	(J)E01					
Fish and Wildlife Jurisdiction	(9)001	(2)601					
Buffer Zones	(b)E01	(p)£01					
Livestock Grazing	(5)£01	(5)£01	(2)£01	906, 510	90€		018
Maps and legal descriptions	(4)601	(q) co 1	(3)102	709	10 E	404	\$0\$
Management under Wilderness Act	(#)£01	(#)£01	301(P)	EU9			
					Denth Valley NP	Loshun 4N seal	Majeve
Sankivaria Israela	BLM Wilderness	Milderness FS	Mijqelueze EM2	NPS Wilderness	Mnn-wilderne	o enoitio¶ ee	flark Units

CHAPTER VI. STATEMENT OF AGREEMENTS

We the undersigned managers agree to:

- 1. The Principles enunciated herein as guiding the management of wilderness in the California Desert;
- To review and give individual attention to each proposed annex to these Principles that addresses wilderness and other management issues;
- To authorize the wilderness task force to meet with other task forces to craft procedures which minimize impacts to wilderness resources.

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PRINCIPLES GOVERNING GRAZING ON THOSE PORTIONS OF ALLOTMENTS WITHIN WILDERNESS

I. INTRODUCTION

The California Desert Protection Act provides, at Section 103(e), that livestock grazing established prior to the Act, shall be permitted to continue within Bureau of Land Management wilderness areas subject to reasonable regulations, policies and practices.

Section 103(c) reinforces this direction by prescribing that such regulations, policies and practices conform to Section 101(f) of the Arizona Wilderness Act (P.L. 101-628).

Sections 306 and 510 of the Act authorize the continuation of grazing privileges "at no more than the current level" on the "lands" added to the National Park System in Death Valley National Park and Mojave National Preserve. Such grazing is to be governed by "applicable laws and National Park Service (NPS) regulations." The authorization of existing grazing on the "lands" in these National Park System units provided for continued grazing without regard as to whether these "land" are wilderness or non-wilderness within the two units. Thus, grazing may continue, where it now exists, at no more than the current level, on both the wilderness and non-wilderness lands within Death Valley National Park and the Mojave National Preserve.

II. PRINCIPLES

1. TRANSPORTATION:

- a. Each non-emergency entry by motorized vehicle or mechanized transport into wilderness must be approved by the Authorized Officer.
- b. The Authorized Officer may pre-approve a list of scheduled motorized vehicle or mechanized transport entries into wilderness.¹
- c. Motorized vehicle or mechanized transport use in wilderness will normally only be permitted to those portions of the wilderness where they had occurred prior to the area's designation as wilderness.
- d. Each emergency motor vehicle or mechanized transport entry must be reported to the Authorized Officer beforehand, if possible, or by close of business on the next working day. Phone notification is sufficient, if followed up in writing.
- e. "Emergency" access for purpose of entry, as provided for, in Section 101(f) of P.L. 101-628, exist where there is imminent danger of loss of livestock, severe facility damage, an injured person requiring transport, or life threatening situation involving one or more persons.
- f. Mechanized transport includes, but is not limited to, any wheeled vehicle.
- g. Entry by foot or by animal needs no prior approval, unless required by regulations (for example, commercial activities or organized groups).

Such pre-approvals may be specified for certain routes, means, frequencies and purposes. Such pre-approvals may provide for "occasional" motorized vehicle or mechanized transport use. Such use is not to be routine.

MOTORIZED EQUIPMENT

- a. Use of motorized equipment in wilderness (e.g. chain saws, augers, battery operated equipment, etc.) must be approved by the Authorized Officer.
- b. The Authorized Officer may pre-approve a list of scheduled motorized equipment use in wilderness.²
- c. Motorized equipment use in wilderness will normally only be permitted in those portions of the wilderness where they had occurred prior to the area's designation as wilderness.

3. NEW STRUCTURES AND INSTALLATIONS

FOR NPS

a. Construction of new range facilities (e.g. wells, pipelines, troughs, windmills, fences, cabins) in wilderness will be permitted only where it serves the purpose of natural and/or cultural resource protection.

FOR BLM

a. Construction of new range facilities in wilderness should primarily serve the purpose of resource protection.

4. REPLACEMENT OF EXISTING STRUCTURES AND INSTALLATIONS

a. The Authorized Officer may approve the replacement of existing range facilities in wilderness.

Such pre-approvals may be specified for certain areas, tools, frequencies and purposes.

- b. Such replacement generally should be of facilities "in kind."³
- c. Replacement of existing facilities in wilderness, where they are visible (i.e. above ground) shall be with natural materials, if the use of natural materials does not impose "unreasonable additional costs" on the permittee.

5. MAINTENANCE OF STRUCTURES AND INSTALLATIONS

a. Maintenance of existing operational facilities requires approval of the Authorized Officer only if use of motorized vehicle, mechanized transport or motorized equipment is necessary.

6. ABANDONMENT OF FACILITIES

a. The permittee will remove all facilities located in wilderness that the permittee either constructed, or made use of, but which are now abandoned.

³ For example, a 20' windmill should not be replaced with a 35' windmill; or a one room line shack by a four room ranch house.

Superintendent, Death Valley National Park

SIGNATURES Manager, California Desent District Manager, Yuma District Superintendent, Mojave National Preserve DATE 9/15/95 DATE 9/15/95 DATE

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PRINCIPLES GOVERNING LAW ENFORCEMENT AND BORDER OPERATIONS WITHIN WILDERNESS

I. INTRODUCTION

Title VI of the California Desert Protection Act (CDPA) designated National Park. System areas as wilderness. Law enforcement management in park wilderness is governed by Section 4(c) of the Wilderness Act. Section 4(c) provides that actions such as measures required in emergencies involving the health and safety of persons within the wilderness areas may be taken as is "necessary to meet the minimum requirements for the administration of the area for the purposes of" wilderness.

Title I of the CDPA designated BLM areas as wilderness. Section 103(g) of the Act provided direction for managing law enforcement access in wilderness. This direction is unique among wilderness laws. Section 103(g) applies only to Title I wilderness areas designated in the CDPA (BLM and Forest Service managed areas) and it states that the prohibitions of the Wilderness Act of 1964 are not to "...be construed to preclude Federal, State, and local law enforcement agencies from conducting law enforcement and border operations as permitted before the date of enactment of this Act, including the use of motorized vehicles and aircraft, on any lands designated as wilderness by this Act."

This Annex (Annex 2) applies the key terms in Section 103(g) of the CDPA to the management of Title I (BLM/FS only) wilderness in the California Desert. The annex also prescribes the standards of the Wilderness Act, Section 4(c) to Title VI (NPS) wilderness.

Wilderness designation by Congress did not erase the existing roads nor alter the public's use patterns. Much of the wilderness designated by the CDPA is crossed by a network of existing motor vehicle trails, that are now closed by law to motor vehicle and mechanized transport use and landing of aircraft. In the initial phases of wilderness protection, education is a key tool. So too is the application of practical and pragmatic law enforcement methods. As the Federal agencies succeed in restoring degraded wilderness areas, the nature of the law enforcement methods will evolve and adapt to reflect the protected status of wilderness.

II. PRINCIPLES

- 1. Section 103(g) of the California Desert Protection Act (CDPA) modifies the preclusion on the use of motor vehicles, landing of aircraft, mechanized transport and motorized equipment established by the Wilderness Act, section 4(c), within Title I Federal agency administered wilderness areas established by the CDPA.
- 2. Section 103(g) applies to every Federal, State, and local law enforcement agency that exercises lawful authority over public conduct on the Title I wilderness areas designated by the CDPA.
- 3. The modification of the Wilderness Act established by Section 103(g) applies only to law enforcement and border operations on the lands that are now Title I wilderness where such activities were "permitted" prior to the wilderness designation. Section 103(g) does not limit the use of motor vehicles or motorized equipment, mechanized transport or the landing of aircraft in connection with law enforcement and border operations to only where such uses actually occurred on October 31, 1994.
- 4. "Law enforcement" for the purposes of this Annex means the application of any criminal or civil statutes, laws, ordinances, rules and regulations by a law enforcement officer of a Federal, State or local government agency. Law enforcement includes communications, surveillance, patrol, investigation, gathering of evidence, apprehension, detention or arrest of a suspect, citation, search and seizure, and the service of process.
- 5. "Border operations" means patrol via vehicle or aircraft, the detection, interdiction or apprehension of illegal aliens and/or contraband, and the installation of detection devices and the placement of fences in those wilderness boundaries that form part of the international boundary with the Republic of Mexico.
- 6. The provisions of Section 103(g) of the CDPA apply only to law enforcement and border operations. Section 103(g) does not apply to search and rescue, fire, emergency medical services and similar activities. Such issues are governed by the Wilderness Act, Section 4(c) or 4(d)1, and separate Annexes will address them.
- 7. The use of motor vehicles, landing of aircraft, mechanized transport and

motorized equipment on Federal lands that are designated as wilderness for law enforcement and border operations is subject, on Title I wilderness, to such reasonable conditions that the appropriate Federal land-managing agency may impose. Such uses in Title VI wilderness are subject to NPS determination as a necessary requirement for the administration of the area as wilderness.

- 8. The following standards govern motor vehicle, motorized equipment, mechanized transport use or landing of aircraft in wilderness created by the CDPA but each agency may impose additional or more restrictive standards:
 - a. Protection of wilderness is dependent upon the vigorous enforcement of applicable laws and regulations.
 - b. General or routine motor vehicle, motorized equipment, mechanized transport or aircraft landing for law enforcement, and border operations in wilderness is not authorized. Such uses are permissible only if vehicle use/landing of aircraft is the last reasonable means to enforce laws pertaining to wilderness resource protection and;
 - 1. where on-going violations of law or regulations have been observed; or
 - 2. when the law enforcement officer has reason to believe that a violation of Federal, State or local law is occurring, and when the resultant impacts of entering wilderness are justifiable; or
 - 3. when the law enforcement officer has reason to believe that officer safety, prudence and proper police procedure justify such uses.
 - c. Law enforcement officers must be sensitive to wilderness designation and will minimize the use of motorized vehicle, mechanized transport and aircraft landings in wilderness. Convenience alone is not a justification for such uses in wilderness.
 - d. Each motor vehicle or motorized equipment use or landing of aircraft in wilderness will be documented by agency personnel on appropriate forms, as prescribed by each agency and reported by other Federal, State and local

agencies to the appropriate Area Manager or Park Superintendent. Such documentation is for the purpose of providing data for internal management oversight and review of problem areas.

- e. During the initial phases of wilderness protection, greater use of vehicular access into wilderness may be employed but only as a strategy of <u>limited</u> duration, not to exceed two years after this Annex.
- 9. Area Managers and Superintendents are responsible to deploy and use non-vehicular ground patrol and passive devices, including signs, boundary notices, physical closures, maps and educational efforts to reduce and prevent illegal intrusions into wilderness.
- 10. The NPS and BLM will seek to enter into joint cooperative agreements with other Federal, State and local law enforcement agencies whose responsibilities require that they enforce the law on persons in BLM or NPS wilderness. A part of such agreements will provide more specific details as to protocols, procedures, notification, routes, means and reporting wilderness entries under Section 103(g) of the CDPA, and Section 4(c) of the Wilderness Act for Title VI wilderness.
- 11. NPS and BLM law enforcement officers and wilderness staff will ensure reclamation of any readily visable impacts to wilderness caused by motor vehicle, motorized equipment or aircraft use by law enforcement personnel.
- 12. Upon conviction, as part of the sentencing process, any costs of reclamation will be sought from violators in the form of restitution for the BLM or NPS.
- 13. The installation of BLM/NPS law enforcement radio repeaters in wilderness is not permitted except if it is determined, after the consideration of reasonable alternatives, to be the minimum requirement necessary for the administration of the area as wilderness (pursuant to Section 4(c) of the Wilderness Act). The consideration of reasonable alternatives means that the NPS or BLM will prepare an environmental assessment with public comment for such proposals. Alternatives to be considered include the possibility of consolidating repeater sites at existing locations or installing more than one repeater in nonwilderness, rather than a single repeater in wilderness. Cost alone should not disqualify an otherwise reasonable alternative from consideration.

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Manager, California Desert District	'DATÉ
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Manager, Yuma District	DATE
Superintendent, Mojave National Preserve	9 5 95- DATE
Superintendent, Death Valley National Park	9/15/95 DATE
Superintendent, Joshua Tree National Park	PATE
State Supervisor, U.S. Fish & Wildlife Service	9/15/95 DATE

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PRINCIPLES GOVERNING FEDERAL WATER RIGHTS UNDER THE CALIFORNIA DESERT PROTECTION ACT

I. <u>INTRODUCTION</u>

The California Desert Protection Act 1994 (CDPA) is, along with the Arizona Wilderness Act of 1991, unique among wilderness legislation. Congress in Section 706 of the CDPA explicitly reserved a quantity of water sufficient to fulfill the purposes of the Act. The water rights reserved are specific to the wilderness areas located in California designated by the Act. The CDPA bypasses the debate over whether reserving Federal lands as "wilderness" establishes an implicit Federal reserved water right for that purpose.

Federal reserved water rights are a unique class of water right. Such rights are not established by the operation of State law and are exempt from State requirements for permits, diversion, actual use for beneficial purposes, forfeiture and abandonment. Such rights allow for the assertion of a Federal reserved water right to unappropriated water available on the date of the reservation (i.e., 10/31/94), but "only that amount of water necessary to fulfill the purpose of the reservation and no more." Federal reserved water rights only reserves pertinent water which is unappropriated on the date of the reservation (Cappaert vs. US., 1976). Thus, the establishment of the CDPA Federal reserved water right does not and cannot infringe upon or undo any reserved or appropriated water rights existing on the date of the reservation, including those of the United States.

Section 706(b) mandates that the Secretary and all other officers of the United States take "all steps necessary to protect the rights reserved by this section". Hence, it is the responsibility of both the NPS and BLM to protect the explicit reserved water rights established under the CDPA.

In addition to the explicit reserved water rights of Section 706, the courts have long held that National Park System units, wilderness or non-wilderness, are Federal reservations to which attach an implicit Federal reserved water right. (Arizona vs. CA, 1963)

BLM and NPS will apply the following principles to discharge their responsibilities under Section 706 of the CDPA to manage and protect Federal reserved water rights. Each agency shall also incorporate their respective policies, guidelines, and administrative procedures in the performance of these duties.

II. PRINCIPLES

- 1. BLM in its wilderness planning process for each wilderness area, and NPS in its general planning process for each unit of the National Park System, will inventory all water sources within the boundaries of the wilderness area/system unit. This inventory should also include (1) identification of previously appropriated water rights of the United States under State law, (2) identification of riparian and groundwater rights of the United States, (3) identification of existing Federal reserved rights under authorities other than CDPA, e.g., public water reserves, and (4) quantification of the amount of water from the water source necessary to fulfill the purpose of the reservation.
- 2. BLM and NPS will identify as a Federal reserved water right all of the unappropriated water from any water source identified on federal lands within the boundaries of designated wilderness and/or Park areas in the California Desert. Such quantities are the minimum necessary to fulfill the purposes of the reservations which is to preserve, protect, and maintain the natural conditions of the wilderness and/or Park areas.
- 3. NPS and BLM will, as appropriate, share water source inventory data.
- 4. NPS and BLM will jointly request the California Division of Water Rights to inform the BLM and/or NPS of any filing for appropriated water rights that is located (1) within the boundaries of a BLM-administered wilderness area or National Park System unit in the California Desert, and (2) outside but adjacent to these boundaries if the appropriation may affect Federal reserved water rights necessary to fulfill the purpose of the reservation and/or appropriated water rights of the United States.
- 5. NPS and BLM will vigorously defend Federal reserved water rights of the wilderness areas and system units through the State of California administrative process and, if necessary, seek judicial remedy in the appropriate courts.

- 6. NPS and BLM will quantify the amount of water reserved to fulfill the purpose of the reservation as part of any adjudication in California in which the United States may be joined under the McCarran Amendment.
- 7. Where necessary, NPS and BLM should pursue acquisition of any existing non-Federal appropriated water right within their respective jurisdictions to enhance wilderness and park values.
- 8. Because use of percolating groundwater does not require a permit from the State of California, NPS and BLM will participate in local government proceedings that authorize non-Federal parties to withdraw percolating groundwater where such withdrawals may impact water sources within their respective jurisdictions to which Federal reserved water rights are attached.
- 9. NPS and BLM will participate in any proceedings pursuant to Nevada state water law that may authorize withdrawal of groundwater where such withdrawal may impact water sources within their respective jurisdictions to which Federal reserved or appropriated water rights are attached.

September 15, 1995: ANNEX 3 - WATER RIGHTS

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Denni R Rissen	9/15-/EJ-
Manager, California Desert District	DATE
Manager, Yuma District	9/15/95 DATE
Superintendent, Mojave National Preserve	DATE
Superintendent, Death Valley National Park	9/15/95 DATE
Superintendent, Joshua Tree National Park	9/15/95 DATE
State Supervisor, U.S. Fish & Wildlife Service	9/15/95 DATE

PRINCIPLES FOR SPECIAL SCIENTIFIC, RECREATIONAL AND COMMERCIAL USES WITHIN WILDERNESS AREAS OF THE CALIFORNIA DESERT

I. INTRODUCTION

The Bureau of Land Management (BLM) and the National Park Service (NPS) regulate a wide range of special uses, some of which are commercial and recreational. The BLM and the NPS authorize such activities on public lands and in National Park System units through a variety of instruments and under their own agency regulations.

Annex 4 examines the principles that govern agency authorization of special scientific, recreational and commercial uses in wilderness areas administered by the BLM and the NPS in the California Desert.

BLM possesses a well developed body of regulations and manuals for wilderness management. BLM and NPS regulations governing many of the special uses are not wilderness specific. However, wilderness designation (and regulations in the case of BLM) may impose prohibitions and/or further restrictions on the activities and associated authorizations. This annex places such authorizations in the context of the Wilderness Act.

II. PRINCIPLES

1. Scientific Research

- a. Since the conduct of legitimate scientific research is a purpose of wilderness, research proposals may be conducted in wilderness if the proposal conforms to agency regulatory standards.
- b. If the research proposal involves prohibited acts under the Wilderness Act (i.e., the use of installations, motor vehicles, motorized equipment, mechanized transport, or landing of aircraft) such uses may be considered ONLY IF the research is a minimum requirement necessary for the administration of the area for the purposes of the Wilderness Act.
- c. To qualify as research for the purpose of the Wilderness Act, such research must be identified as such by the appropriate agency. The agency must then consider what is the minimum requirement for the conduct of research and approve no more than that minimum requirement.
- d. For BLM, laws provide for two types of research on BLM wilderness that are not tied to the administration of the area, but that <u>may</u> be authorized the use of motor vehicle, motorized equipment, mechanized transport, or landing of aircraft. The two types of research are:
 - i. Research by California Fish and Game on BLM wilderness to maintain or restore fish and wildlife populations and the habitats to support such population under Section 103(f) of the California Desert Protection Act; and
 - ii. Surveys, "...consistent with the concept of wilderness preservation, by the Geological Survey and the Bureau of Mines to determine the mineral value, if any, that may be present;..." as provided for in Section 4(d)(2) of the Wilderness Act.

- e. Research involving conduct prohibited by the Wilderness Act will not be allowed within wilderness areas, except as prescribed in "b" and "d" above.
- 2. <u>Commercial Filming And Photography</u> (refer to BLM WO Instruction Memorandum 94-59)
 - a. Commercial filming and photography constitutes a "commercial enterprise." (see exception in 2(c) below). Commercial filming and photography permits will not be issued in designated wilderness areas due to the provision in Section 4(c) of the Wilderness Act that prohibits "commercial enterprise(s)" in wilderness.
 - b. Commercial filming means the use of professional casts, settings or crews, other than bona fide newscasters or personnel. Commercial photography means the taking of photographs of articles of commerce or models for the purpose of advertising (refer to 36 CFR 5.5). Commercial photography also includes taking pictures of public land users, such as those engaged in recreational activities, for the express purpose of selling the photographs to the users.
 - c. Certain commercial filming and photography, under narrowly construed circumstances may be permitted in wilderness under Section 4(d)(6) of the Wilderness Act despite the prohibition on commercial enterprises. Such filming and/or photography must be "...necessary for activities which are proper for realizing the recreational or other wilderness purposes of the (wilderness) areas." Films or photography that educate the public about wilderness protection, safety, ethics, values or resources in a documentary or other instructional format may be considered under Section 4(d)(6) even if such films or photography are involved in commerce. The 4(d)(6) exception does not waive the prohibitions of 4(c) of the Wilderness Act for motor vehicles, landing of aircraft, mechinized transport, structures or installations.

3. Recreation

The Wilderness Act provides for "primitive and unconfined type of recreation." Recreation is subject to all the prohibited acts described in 4(c) of the Wilderness Act.

a. Air Delivery

The delivery of persons, materials, supplies by airborne means into wilderness is prohibited in BLM wilderness (43 CFR 8560.1-2(f)). Air delivery is generally prohibited in any National Park System area, not just wilderness (36 CFR 2.17). The delivery of persons or objects, or the landing of aircraft on National Park System lands requires a special use permit for the former or the promulgation of special regulations for the latter (36 CFR 2.17). The NPS will not promulgate special regulations or issue special use permits to authorize landing of aircraft or air delivery of persons or objects in NPS wilderness.

b. Bolting of Climbing Routes

The installation of new climbing bolts, or reinstallation of bolts on existing routes in wilderness, by use of motorized equipment is prohibited by the Wilderness Act section 4(c). No new bolts will be permitted on climbing routes in wilderness areas until such time as agency planning documents have been completed and reached a conclusion on whether such installations are permitted or prohibited under the Wilderness Act.

c. Contests

Contests, as defined in the BLM manual 8560.31(D), are events that entail physical or mental endurance of a person or animal; foot races; canoe or boat races; competitive trail rides; survival contests or exercises. They are not permitted in wilderness areas of the California Desert.

d. Commercial Recreational Activities

Recreation use of wilderness lands in the California Desert for business or financial gain is not permitted. Section 4(d)(6) provides an exception for certain commercial recreational activities. Section 4(d)(6) provides that "commercial services may be performed within wilderness areas to the extent necessary for activities which are proper for realizing the recreational and other wilderness purposes of the areas." This exception was crafted primarily for climbing, hiking, river and hunting guide services.

A commercial recreational service, such as a guide service, may be allowed under Section 4(d)(6). However, such a service is subject to all the prohibitions listed in 4(c) of the Wilderness Act and does not qualify for the minimum requirement exception to the prohibitions.

Agencies will require commercial stock users in wilderness to use their own "weed free" feed for stock.

e. Backcountry Permits

Individual Resource Areas and Parks/Preserve have the discretion to require backcountry wilderness permits based on each agency's regulatory authority.

f. Group Size

Individual Resource Areas and Parks/Preserve may prescribe group size limits under that agency's regulatory authorities. Where there are contiguous wilderness areas managed by separate agencies, each agency will make every effort to develop common group size limits.

g. Special Events

Non-commercial recreational special events, such as gatherings, assemblies and weddings may be authorized in wilderness. Besides conforming to each agency's regulations, such events must:

- (1) must not entail use of motor vehicles, mechanized transport, landing of aircraft, motorized equipment, structures, installations, or any other of the prohibited acts described in Section 4(c) of the Wilderness Act;
- (2) not harm the resources of the wilderness or the wilderness experience; and
- (3) conform with duly-established group sizes.

Special events that are an exercise of First Amendment rights of freedom of speech, assembly or religion, and that would violate the prohibitions of the Wilderness Act, are governed by standards enunciated in Federal case law. Such requests require special guidance beyond the scope of these principles.

h. Noncommercial Recreational Stock Use

Recreational stock use is allowed in wilderness in the California Desert. It must conform with group size limits and closures imposed by the respective agency. The agencies will require that stock users bring in their own "weed free" feed.

i. Hunting

Hunting is permitted in wilderness areas where hunting is authorized in law insofar as such activity is conducted without violating any of the prohibitions of the Wilderness Act such as the use of motor vehicles, mechanized transport, landing of aircraft, motorized equipment, structures or installations.

j. Rockhounding

Recreational rockhounding, including the use of metal detectors, is not prohibited in BLM wilderness (BLM manual .31E). It is not allowed on NPS lands, including NPS wilderness lands (36 CFR 2.1).

k. Recreational Mining

So called "Recreational mining" in BLM wilderness is subject to 43 CFR 3809. Such activity is prohibited on all NPS lands, including wilderness.

4. Rights-of-Way (ROW)

- a. Since rights-of-way are "commercial enterprises", new rights-of-way will not be issued in NPS wilderness areas. Section 501 of FLPMA prohibits issuing rights-of-way in BLM managed wilderness areas.
- b. Existing rights-of-way in wilderness may be renewed as they expire only when the existing instrument conveying a rights-of-way provides a right of renewal that qualifies the right as a "prior existing right" for purposes of the Wilderness Act. If the expiring rights-of-way lacks a right of renewal, the administrating agency will seek to relocate the facility outside of wilderness, if possible. If the facility can not be relocated (e.g., a major oil and gas pipeline) the continued occupancy of federal lands will be authorized, for public lands, by a 2920 permit and for National Park System lands, a special use permit, or under the appropriate legal authority governing that facility.
- c. Under Section 708 of the California Desert Protection Act, rights of access for in-holders in wilderness areas in the California Desert are governed by separate instructional guidance from the BLM State Office and NPS Field Office. (See 43 CFR 8560.4(3) and BLM-CA Instruction Memorandum 95-137 for additional BLM guidance.)

III. SIGNATURES Manager, California Desert District	12/1/81- DATE
Manager, Yuma District	DATE
Superintendent, Mojave National Preserve Superintendent, Death Valley National Park	12/6/95 DATE 12/6/95 DATE
Superintendent, Joshua Tree National Park	<u>12-6 95</u> DATE
State Supervisor, U.S. Fish & Wildlife Service	12/6/95 DATE
alon O'Neill	12/6/95
Superintendent, Lake Mead National Rec. Area	DATE

PRINCIPLES FOR FIRE MANAGEMENT WITHIN WILDERNESS AREAS OF THE CALIFORNIA DESERT

I. <u>INTRODUCTION</u>

The Wilderness Act designates that certain Federal lands be administered to preserve their "natural condition" and to retain their wilderness character. Wilderness is an area of land that is to remain untrammeled, primarily affected by the forces of nature. Fire is one of those natural forces.

The Wilderness Act prohibits roads, motor vehicle use, motorized equipment, landing of aircraft, mechanical transport, structures and installations. The Act provides, however, that the administering agency may allow such uses if the uses are the minimum requirement for the administration of the area for the purpose of the Wilderness Act. Such measures include actions required in emergencies involving the health and safety of persons within the area.

Further, the Wilderness Act at section 4(d)(1) provides that the administering agency may take such measures "...as may be necessary in the control of fire...subject to such conditions as the Secretary may prescribe." The California Desert Protection Act contains no special provisions regarding fire management.

Naturally ignited fires are a powerful force of nature and are integral to the wilderness condition that the agencies are required to protect. Fires, no matter what the source of ignition, may also threaten life, property, safety or unique natural or cultural resource values (e.g. endangered species, historic structures), and thus, require suppression. This Annex sets forth governing principles and prescribes measures intended to reconcile these two aspects of fire management.

II. PRINCIPLES

- 1. Until fire management plans with prescriptions for prescribed fire are developed, Department of the Interior deems all fires in wilderness to be "wildfires" and will be subject to suppression action.
- 2. A wildfire in a wilderness may not become an emergency that requires aggressive response unless the fire threatens human life, property, safety or critical resource values.
- 3. When engaged in suppressing wildfires in wilderness, the following "special suppression requirements" will be incorporated into the fire suppression action:
 - a. Safety of fire-fighting personnel and other visitors in the wilderness area will receive the highest priority;
 - b. All suppression actions will be carried out in a manner that least impairs wilderness values, i.e minimum impact suppression techniques;
 - c. Any action necessary to prevent loss of life or significant real property may be taken, even if the action impairs wilderness values (as defined in Section 2(c) of the 1964 Wilderness Act). Actions to prevent loss of property or natural or cultural resources may be taken if the action impairs wilderness values, based on the values at risk commensurate with fire management costs and personal safety;
 - d. All fires in wilderness that are protected by a non-Interior agency, to the extent possible, will have an Interior Department Agency Representative assigned to the fire to advise the protecting agency of Interior Department laws and policies, including the Wilderness Act;
 - e. Heavy equipment (bulldozers/tractors) will not be used in wilderness areas, except to prevent loss of human life and where judged essential to prevent loss of significant real property and natural or cultural resources, and where specifically authorized by the Agency

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Administrator (Manager - Desert District Manager, Park Superintendent or Refuge Manager);

- f. All rubber-tired suppression vehicles will be limited to existing residual ways of passage;
- g. Engines and portable pumps may be used to support fireline construction through hose lays, where possible;
- h. Field decisions regarding will genuinely consider the use of foam, fire-line explosives, fugitive (uncolored) retardant, biodegradable materials and other new technologies in lieu of more surface-disturbing suppression tactics;
- i. Every effort will be made to avoid dropping retardant within 200' from any wetland or riparian area;
- j. Where feasible, it will be acceptable to burn out ridges, washes, other natural barriers, and routes to stop the spread of fire and serve as control lines. Firelines may tie into but not proceed through meadows, spring areas, riparian zones or cultural sites;
- Helicopters and retardant aircraft may be used in initial attack and as reinforcement as deemed necessary by the Incident Commander. Helicopters may land on existing heliports, helispots, or unimproved sites in wilderness;
- l. Entry into wilderness should be by walking, helicopters on unimproved helispots, rappeling or smokejumping to the greatest extent practicable;
- m. Chainsaw use may be pre-approved if necessary to prevent the fire from escaping initial attack or for helispot med-evac purposes;
- n. Reclamation requirements will be determined by the Incident Commander and the Agency Representative. Reclamation will be determined during suppression activities while fire forces and

equipment are still on incident. Reclamation actions should be taken immediately following control of the fire. Surface disturbances occurring in wilderness from suppression actions must be rehabilitated to as natural condition as possible;

- 4. District Managers, Park Superintendents or Refuge Managers will issue written instructions, consistent with delegations of authority, for initial attack prior to the 1996 fire season.
- 5. In the absence of a fire management plan, an Escaped Fire Situation Analysis (EFSA) must be developed for every wildfire in wilderness that is not immediately suppressed. The EFSA will prescribe the level of suppression action. For fires in National Park System units, the EFSA will address appropriate suppression strategy (confine, contain or control). The EFSA may prescribe actions that range from surveillance/monitoring to full suppression. The EFSA will be used to reconcile resource management issues as they relate to the wildfire.
- 6. The Agency Administrator or their delegated representative is responsible for developing the EFSA in conjunction with the Incident Commander (IC).
- 7. Fire management plans for the California Desert will be developed and will recognize the integral role of fire as a critical natural process in wilderness. Each fire management plan will develop prescriptions under which fires, naturally or management ignited, will be permitted to burn in wilderness. Such plans must address historic fire occurrence, natural role of fire, current vegetative conditions and zones where prescribed natural fire may exist, as well as critical resources (see #2) and real property in the area.
- 8. Fire management plans may provide for prescribed fires to attain the following objectives:
 - a. To reintroduce or maintain natural conditions of fire-dependent wildland ecosystems;
 - b. To restore fire where past strict fire control measures have interfered with natural processes;

- c. Where a primary value of a wilderness area will be perpetuated as a result of burning;
- d. Where prescribed burning will perpetuate a threatened or endangered species, or habitat listed as critical to that species; or
- e. Where necessary to return fuels to a manageable state that will allow safe, cost-effective prescribed natural fires.
- 9. Fire management and suppression will conform to the fire management plan that is in force for the lands in question.
- 10. Fire management plans will undergo consultation with the U.S. Fish and Wildlife Service under Section 7 of the Endangered Species Act, and all other relevant compliance of the National Environmental Policy Act (NEPA).
- 11. The signatories will develop local operating plans, where necessary, with other agencies, notably the California Department of Forestry and Fire Protection, that engage in fire suppression on Federal lands that are wilderness. Such operating plans will ensure that the laws and standards that govern wilderness on Federal lands apply to the cooperating agencies. Such operating plans will include detailed requirements for rehabilitation of suppression-caused damage.
- 12. The signatories will support standardized job performance requirements and qualifications for agency representatives and environmental specialists between agencies.

SIGNATURES

Molly S. Bigg	7/17/96
Manager, California Desert District	DATE
Manager, Yuma District	DATE
Manager, rama District	
Superintendent, Mojave National Preserve	7/17/96 DATE
Superintendent, Death Valley National Park	7/17/96 DATE
Superintendent, Joshua Tree National Park	7/17/96 DATE
Glan O'Neill	7/17/96
Superintendent, Lake Mead National Rec. Area	DATE
State Supervisor, U.S. Fish & Wildlife Service Region One	1/17/96 DATE
Lower Colorado River Complex Manager, USF&WS Region Two	DATE

See Oslavy	7/17/56
Area Manager, Ridgecrest Resource Area	DATE
Area Manager, Barstow Resource Area	7-17-96 DATE
Area Manager, Needles Resource Area	7-/7-96 DATE
Fulla Daugan Area Manager, Palm Springs/South-Coast Resource Area	7-17-96 DATE
Area Manager, El Centro Resource Area	7-17-96 DATE

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PRINCIPLES GOVERNING EXCHANGES OF FEDERAL LANDS FOR NON-FEDERAL LANDS WITH PARTIES OTHER THAN THE CALIFORNIA STATE LANDS COMMISSION

I. INTRODUCTION

This Annex describes the principles by which the Bureau of Land Management (BLM) and the National Park Service (NPS) will manage requests by non-Federal parties (other than the California State Lands Commission) to exchange non-Federal lands within wilderness areas and park system units designated by the California Desert Protection Act of 1994 (CDPA).

The CDPA, Section 702, directs the Secretary of the Interior to give priority to consolidating Federal ownership within wilderness areas and park system units designated by the CDPA when preparing land tenure adjustment decisions within the California Desert Conservation Area of the BLM.

Also, the CDPA, Section 707, directs the Secretary of the Interior to enter into negotiations with the California State Lands Commission for an agreement to exchange Federal lands for State lands within the boundaries of the wilderness areas and park system units. Section 707(c) requires that prior to disposing any Federal lands within the State of California, the State Lands Commission must be given notice of such disposal. On October 26, 1995, the State Lands Commission signed an agreement to complete land exchanges consistent with Section 707 of the CDPA.

Under general and specific legislative authority, the Secretary of the Interior may dispose of Federal lands in exchange for non-Federal lands within wilderness areas or park system units. Such exchanges, depending on the particulars, may be conducted under the authorities provided by Section 206 of the Federal Land Policy and Management Act of 1976 (FLPMA), as amended by the Federal Land Exchange Facilitation Act of 1988 (FLEFA) [43 U.S.C. 1716], and/or the Land and Water Conservation Fund Act (16 U.S.C. 460]-22(b)).

II. PRINCIPLES

- 1. The planning processes of both the BLM and the NPS will identify priorities for land acquisitions within wilderness areas and park system units. When priorities are identified, a proposal for an exchange of Federal lands for non-Federal lands by a party (other than the State Lands Commission) will be weighed against the priorities established through planning.
- 2. If the planning processes that identify land acquisition priorities are not complete, an exchange of Federal lands for non-Federal lands may be consummated if the exchange proposal justifies action (e.g. imminent danger of development in a wilderness area, offered non-Federal lands have high resource value, or there is a substantial hardship for the landowner).
- 3. In addition to Federal laws that govern land exchanges, any exchange with a non-Federal party other than the State Lands Commission must conform to Section 707(c) of the CDPA. That section requires that the State Lands Commission be given notice of any proposed disposal of Federal land, and allowed up to six months to notify the Secretary if it wishes to enter into an exchange for such lands. The Department may exchange the Federal lands prior to the end of the six month notification period if the Commission notifies the Secretary that it does not wish to gain title to the Federal lands proposed for exchange.
- 4. If a private party proposes to exchange non-Federal land in a park system unit for public lands administered by the BLM, the NPS will be the lead agency in responding to the party proposing the exchange. Such an exchange may be carried out only with the mutual consent of both the NPS and the BLM. If both agencies agree to the exchange, the NPS will be responsible for processing the exchange. The BLM will be responsible for issuing conveyance documents for the Federal lands.
- 5. Processing costs for all exchanges will be funded equally by the exchange proponent and the agency receiving the non-Federal land. The NPS may provide funds to the BLM for costs in issuing patents and record keeping associated with disposal of Federal lands in exchange for non-Federal lands within park system units.

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ANNEX 6 - Land Exchanges (July 17, 1996)

- 6. Pursuant to Section 704 of the CDPA, lands acquired by exchange within wilderness areas shall become part of the wilderness area within which they are located and shall be managed in accordance with all the provisions of the CDPA and other applicable laws.
- 7. Pursuant to Section 206(c) of the FLPMA, as amended by Section 3(c) of the FLEFA, lands acquired by exchange within park system units shall become part of the park system unit within which they are located and shall be managed in accordance with all the provisions of the CDPA and other applicable laws.
- 8. An exchange of NPS-administered lands in a park for nonfederal lands within that park will be managed solely by the NPS under 16 U.S.C. 4601-22(b) using NPS land exchange guidelines.

SIGNATURES

Molly S. Brady	7/17/96
Manager, California Desert Disprict	DATE
Manager, Yuma District	DATE
Superintendent, Mojave National Preserve	1/17/96 DATE
Superintendent, Death Valley National Park	7/17/96 DATE
Superintendent, Joshua Tree National Park	7/11/96 DATE
Superintendent, Lake Mead National Rec. Area	7/17/96 DATE
State Supervisor, U.S. Fish & Wildlife Service Region One	7/17/96 DATE
Lower Colorado River Complex Manager, USF&WS	DATE

Area Manager, El Centro Resource Area

7-/7- 96 DATE

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PRINCIPLES INVOLVING HEALTH AND SAFETY OF PERSONS WITHIN WILDERNESS AREAS OF THE CALIFORNIA DESERT

I. INTRODUCTION

The Wilderness Act designates that certain Federal lands be administered to preserve their "natural condition" and to retain their wilderness character. Wilderness is an area of land remaining untrammeled and primarily affected by the forces of nature.

The Wilderness Act prohibits roads, motor vehicle use, motorized equipment, the landing of aircraft, mechanical transport, structures and installations. The Act provides, however, that the administering agency may allow these prohibited uses if they are the minimum requirement necessary for the administration of the area for the purpose of the Wilderness Act. Such measures include actions required in emergencies involving the health and safety of persons within the wilderness area. (Wilderness Act, section 4(c))

Each Federal Land Manager must decide which measures constitute the minimum requirement for emergencies involving health and safety of persons in wilderness. This annex is intended to assist managers in applying the minimum requirement to specific emergency incidents. No statement of principles can prescribe the minimum requirement for every emergency incident. (Note: emergencies involving property or livestock issues may be addressed in other annexes.)

II. PRINCIPLES

- 1. Federal Land Managers may allow the use of otherwise prohibited activities. (i.e., aircraft landings, motor vehicles, motorized equipment, mechanical transport, structures, installations, or temporary roads) if such activities are the minimum requirements necessary to conduct an emergency operation involving the health and safety of persons in wilderness.
- 2. Federal Land Managers may allow otherwise prohibited actions to ensure not only the life, health or safety of an injured, lost, or stranded person, but also the life, health, or safety of the rescue personnel.
- 3. For this Annex, an emergency is generally a sudden, urgent, usually unforeseen event or set of circumstances that pose an imminent threat to human life, health or safety and that requires immediate action. What constitutes an "emergency" is ultimately determined by the Incident Commander in consultation with the Federal Land Manager.
- 4. Federal Land Managers should coordinate through MOUs and cooperative training sessions with federal and non-federal cooperators to ensure emergency responses for the health and safety of persons are consistent with these Principles and the 1964 Wilderness Act.
- 5. So that the non-Interior Incident Commanders will obtain advice concerning applicable wilderness laws, regulations and policies, the non-Interior Incident Commanders shall contact Federal Land Managers (directly through the FICC) when Search and Rescue activities are on or are suspected to be on federal wilderness. In the event contact cannot be made with the Federal Land Manager these Principles should not be viewed as an obstacle to the conduct of the emergency response in wilderness.
- 6. For the purposes of these Principles, searches for lost persons and the rescue of sick, injured or stranded persons may constitute emergencies. The Incident Commander and the Federal Land Managers determination of minimum requirements necessary may depend on several criteria including but not

limited to weather, topography, mental condition, age, physical condition, preparedness and other relevant factors.

- 7. The choice of an emergency response methods should be commensurate to what is necessary to eliminate genuine threats to life, health or safety. (For example, it may be appropriate to walk or carry out a person with a sprained ankle in situations that are non-threatening and non-compromising to the health and safety of the injured person and rescuers.) Where there is doubt about the method of response, the benefit of doubt will go to preserving human life, health, and safety.
- 8. Emergency operations involving the health and safety of persons must be sensitive to wilderness designation. Emergency operations should minimize the use of motorized vehicles, mechanical transport, motorized equipment, and aircraft landing in wilderness whenever possible.
- 9. Recovery of an auto, airplane and personal effects that do not involve the health and safety of person, etc. is not an emergency. For this Annex, the agency, using the 4(c) provision within the Wilderness Act (...the minimum necessary for the administration of the area as wilderness...) may decide to take (especially in the case of the removal of a deceased person) actions otherwise prohibited by the 1964 Wilderness Act to effect the recovery.
- 10. These Principles should be incorporated within all future MOUs, agreements, and plans affecting emergencies involving the health and safety of persons within wilderness areas.

SIGNATURES	
Dini RRism	1/22/97
Manager, California Desert District	DATE
Manager, Yuma District	DATE
Superintendent, Mojave National Preserve	1/22/97 DATE
Superintendent, Death Valley National Park	1/22/97 DATE
Superintendent, Joshua Tree National Park	//22/97 DATE
Superintendent, Lake Mead National Rec. Area	1/22/97 DATE
State Supervisor, U.S. Fish & Wildlife Service Region One	<u>1/22/97</u> DATE
Lower Colorado River Complex Manager, USF&WS Region Two	DATE

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See Selaney Area Manager, Ridgecrest Resource Area	1/c2/97 DATE
Area Manager, Barstow Resource Area	1-22-97 DATE
Area Manager, Needles Resource Area	1/22/97 DATE
Area Manager, Palm Springs/South-Coast Resource Area	1/22/97 DATE
Area Manager, El Centro Resource Area	1-22-97 DATE

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DEFINING MINIMUM REQUIREMENTS FOR ADMINISTERING WILDERNESS AREAS WITHIN THE CALIFORNIA DESERT

INTRODUCTION

As directed by Congress, it is the intent of the Federal Land Managers of the California Desert to secure for the American people of present and future generations an enduring resource of wilderness in the wilderness areas designated through the California Desert Protection Act of 1994. To ensure these areas are managed as directed by Congress, Section 4(c) of the Wilderness Act prohibits nine activities on those wilderness lands. Subject to specific exceptions, the Wilderness Act stipulates that there will be no commercial enterprise, no permanent road, no temporary road, no use of motor vehicles, motorized equipment or motorboats, no landing of aircraft, no other form of mechanical transport, and no structure or installation within any wilderness area. Actions that do not incorporate any of these nine Wilderness Act prohibitions are beyond the scope of this Annex.

The Wilderness Act provides a major exception to seven of the nine prohibitions listed in Section 4(c) of the Act. This Section states that "... except as necessary to meet minimum requirements for the administration of the area for the purpose of this Act (including measures required in emergencies involving the health and safety of persons within the area), there shall be no temporary road, no use of motor vehicles, motorized equipment or motorboats, no landing of aircraft, no other form of mechanical transport, and no structure or installation ..." This statutory direction is hereafter called the "minimum requirements for administration" exception cannot be used to allow commercial enterprise nor a permanent road. A backcountry patrol station, fire lookout, radio repeater, or chainsaw may be allowed in a wilderness if such use is determined, through a "Minimum Requirement Analysis," to be the "minimum requirements for administration" for the wilderness purpose.

This Annex is intended to clarify management direction and reduce disparity between Federal agencies when applying the "minimum requirements for administration" exception in managing wilderness areas. The decision to approve or deny administrative activities or uses that are the "minimum requirements for administration" remains with each unit manager. However, the Desert Managers,

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through collective communication, will build on a foundation for quality decisions that protect both the physical resources and the wilderness character of the area.

This Annex provides general guidance in determining the use of the "minimum requirements for administration" exception for activities and uses within wilderness. Other annexes, adopted by the Desert Managers, address more specifically the use of the "minimum requirements for administration" determinations for specific circumstances.

The "minimum requirements for administration" exception of the Wilderness Act applies only to agency administrative activities for wilderness. Agency activities include such things as using motorized equipment to construct trails, issuing research permits, granting contracts for facilities in wilderness, signing of MOUs for actions normally prohibited in wilderness, etc. Part A of this Annex provides the direction for managing under these circumstances and applying the "Minimum Requirement Analysis."

For activities by those who possess "existing private rights" in wilderness (e.g., a right-of-way holder), for activities specifically provided by the Wilderness Act, or for activities specifically provided by the California Desert Protection Act, Federal agencies should cooperatively seek to administer for those rights using "minimum tool" concepts. The prohibitions found in Section 4(c) of the Wilderness Act (listed previously) and the "minimum requirements for administration" exception do not apply to "existing private rights" nor to "authorized uses" within designated wilderness. Nonetheless, Federal Land Managers should attempt, when administering for such rights or uses, to minimize impacts on the wilderness resource. Part B of this Annex provides direction for applying the "minimum tool" concept and for using a "Minimum Tool Analysis" (distinct from the "Minimum Requirement Analysis" described in Part A) to administer authorized uses and accommodate existing private rights.

PART A. PRINCIPLES FOR AGENCY ADMINISTRATIVE ACTIVITIES

Part A addresses the use of the Section 4(c) "minimum requirements for administration" exception and the use of the "Minimum Requirement Analysis." This exception authorizes Federal Land Managers to employ temporary roads, use

motor vehicles, use motorized equipment or motorboats, land aircraft, employ mechanical transport, and create structures or installations only if such activities or uses are "... necessary to meet minimum requirements for the administration of the area for the purpose [emphasis added] of this [Wilderness] Act ..." It is therefore imperative that Federal Land Managers ensure that application of this exception is for that purpose. The purpose of wilderness, as defined in Section 2(a) of the Act, is "... to assure that an increasing population, accompanied by expanding settlement and growing mechanization, does not occupy and modify all areas within the United States ... leaving no lands designated for preservation and protection in their natural condition [emphasis added] ..." Furthermore, wilderness is defined in Section 2(c) of the Act as being "... an area where the earth and its community of life are untrammeled by man, where man himself is a visitor who does not remain. An area of wilderness is further defined to mean in this Act an area of undeveloped Federal land retaining its primeval character and influence, without permanent improvements or human habitation, which is protected and managed so as to preserve its natural conditions ..." Each Federal Land Manager must apply the following principles when employing the "minimum requirements for administration" exception for agency administrative activities.

- 1. Each Federal Land Manager who manages wilderness is responsible for administering the wilderness area for the purpose of the Wilderness Act.
- 2. Each Federal Land Manager is responsible for ensuring that any of the seven prohibited activities or uses occur only when necessary to accomplish the "minimum requirements for administration" of the area as wilderness. (Note: this would not apply for exceptions being made under special provisions in the 1964 Wilderness Act or CDPA or for existing private rights).
- 3. If a proposed administrative action would use one or more of the seven prohibited activities or uses identified in Section 4(c) of the Wilderness Act, a "Minimum Requirement Analysis" must be completed. This analysis will include a two step process:
 - a. Step one: An analysis of whether the "minimum requirements for administration" exception is appropriate, that is, whether the action is indeed an agency action necessary for the minimum administration of the wilderness area.

b. Step two: If the action is necessary for wilderness administration, an analysis of whether the techniques used to accomplish the action are the least degrading to wilderness characteristics.

(Note: this "Minimum Requirement Analysis" would not apply for exceptions being made under special provisions in the 1964 Wilderness Act or CDPA or for existing private rights).

- 4. If a proposed agency activity is necessary for the administration of the wilderness area for the purpose of wilderness (defined above) and involves one or more of the normally prohibited actions in 4(c) of the Wilderness Act, then the "Minimum Requirement Analysis" must determine and evaluate, at a minimum:
 - a. Whether the proposed agency activity is consistent with existing statutes, regulations, policies, and plans;
 - b. Whether the proposed agency activity would involve any prohibited use listed in Section 4(c) of the Wilderness Act;
 - c. Whether the proposed agency activity involving a prohibited act could be reasonably accomplished outside of the wilderness area(s); and
 - d. Whether the proposed agency activity could be reasonably accomplished without use of the action(s) prohibited by the Wilderness Act.
- 5. In determining what is reasonable, the Federal Land Manager will:
 - a. Identify alternatives that do not involve any of the prohibited acts in Section 4(c) of the Wilderness Act;
 - b. Not be guided solely by cost, convenience, or efficiency, but may consider time and cost effectiveness;
 - c. Analyze impacts on the wilderness characteristics (e.g., naturalness, opportunities for solitude or primitive and unconfined recreation, and other special features) and resources of each alternative, and;

- d. Determine whether the proposed agency activity, or alternatives not involving any of the prohibited acts, could safely and feasibly accomplish both the objective of the proposed activity and the objective of wilderness management.
- 6. If the decision involves a normally prohibited act under section 4(c), the accompanying "Minimum Requirement Analysis" should contain a clear and compelling justification for use of the prohibited act(s) necessary to implement the decision and necessary to manage the wilderness area.
- 7. The "Minimum Requirement Analysis" should specify the conditions that will mitigate adverse effects of the action(s) on wilderness characteristics.
- 8. A Federal Land Manager may prepare a programmatic document that covers a specific management activity involving a prohibited act in wilderness which recurs on a regular basis (e.g., maintenance of a defined hiking trail system using chainsaws).
- 9. Federal Land Managers should employ minimum impact or light-on-the-land management techniques in wilderness, even if the project (e.g., using low-level helicopter flights to corral burros) does not involve any of the prohibited acts at Section 4(c). Even though such actions are not specifically prohibited by the Wilderness Act and do not require a "minimum requirements administration" exception, agencies should still consider how best to accomplish the goal with minimal impacts to wilderness character.
- 10. Other Annexes address emergency situations provided for in law involving health and safety of persons and responses to fire and crimes in which prior analysis may not be feasible.

PART B. PRINCIPLES FOR THE ADMINISTRATION OF AUTHORIZED USES AND ACCOMMODATION OF EXISTING PRIVATE RIGHTS

Part B addresses the administration of authorized uses provided for in the Wilderness Act and/or the California Desert Protection Act and addresses the accommodation of existing private rights. Authorized uses are summarized in Tables 1 and 2 of the *Principles for Wilderness Management in the California Desert*. Examples of existing private rights could include rights-of-way, valid mining claims, etc. While activities in connection with these authorized uses or existing private rights are not governed by the "minimum requirements for administration" exception to the prohibited acts, the Federal Land Manager will administer or accommodate for such activities to minimize impacts on the wilderness character and resource, and under the conditions prescribed for that activity in law and regulation. To minimize impacts on the wilderness characteristics, the following are the principles the Federal Land Manager must apply to ensure the appropriate "minimum tool" is determined.

- 1. Each Federal Land Manager who manages wilderness is responsible for administering authorized uses and accommodating existing private rights provided for in law.
- 2. Each Federal Land Manager who manages wilderness will ensure that the exercise of rights or authorized uses in wilderness, that require an action normally prohibited in Section 4(c) of the Wilderness Act, are carried out only after the Federal Land Manager issues an authorization (e.g., a permit).
- 3. Authorizations will be issued only after completing an "Minimum Tool Analysis." This analysis must consider:
 - a. Whether the proposed use would involve any normally prohibited activity listed in Section 4(c) of the Wilderness Act;
 - b. Whether the proposed use is specifically provided for in the Wilderness Act or in the California Desert Protection Act;
 - c. Whether the proposed use is necessary for the conduct of the authorized use or for the exercise of the existing private right;

- d. Whether the proposed use could be reasonably accomplished outside of the wilderness area(s); and
- e. Whether the proposed use could be reasonably accomplished without use of the action(s) normally prohibited by the Wilderness Act.
- 4. Authorizations should contain reasonable provisions to reduce the impact on wilderness character. These provisions may include, for example, conditions on the travel routes, methods, means, or frequencies, conditions on the use by season, time of day, or duration, or conditions on the size or type of equipment, structure or installation. Such provisions shall be consistent with the expressed Congressional intent applicable to that activity.
- 5. Federal Land Managers should encourage the use of minimum impact or light-on-the-land management techniques within wilderness whenever possible.

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Inex Thomson	10/8/98
Field Manager, Ridgecrest Field Office	DATE
Field Manager, Barstow Field Office	8-27-98 DATE
Molly S. Bully Field Manager, Needles Field Office	12/27/98 DATE
Field Manager, Palm Springs/South-Coast Field Office	10/29/98 DATE
Field Manager, El Centro Field Office	<u> 10 /29 /58</u> DATE
Field Manager, Yuma Field Office	11/10/98 DATE
Field Manager, Lake Havasu Field Office	11/27/98 DATE/

Field Supervisor, Ventura Fish & Wildlife Office
U.S. Fish & Wildlife Service, Region One

Assistant Field Supervisor, Carlsbad Fish & Wildlife Office
U.S. Fish & Wildlife Service, Region One

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DEFINING MINIMUM REQUIREMENTS FOR ADMINISTERING WILDERNESS AREAS WITHIN THE CALIFORNIA DESERT

INTRODUCTION

As directed by Congress, it is the intent of the Federal Land Managers of the California Desert to secure for the American people of present and future generations an enduring resource of wilderness in the wilderness areas designated through the California Desert Protection Act of 1994. To ensure these areas are managed as directed by Congress, Section 4(c) of the Wilderness Act prohibits nine activities on those wilderness lands. Subject to specific exceptions, the Wilderness Act stipulates that there will be no commercial enterprise, no permanent road, no temporary road, no use of motor vehicles, motorized equipment or motorboats, no landing of aircraft, no other form of mechanical transport, and no structure or installation within any wilderness area. Actions that do not incorporate any of these nine Wilderness Act prohibitions are beyond the scope of this Annex.

The Wilderness Act provides a major exception to seven of the nine prohibitions listed in Section 4(c) of the Act. This Section states that "... except as necessary to meet minimum requirements for the administration of the area for the purpose of this Act (including measures required in emergencies involving the health and safety of persons within the area), there shall be no temporary road, no use of motor vehicles, motorized equipment or motorboats, no landing of aircraft, no other form of mechanical transport, and no structure or installation ..." This statutory direction is hereafter called the "minimum requirements for administration" exception cannot be used to allow commercial enterprise nor a permanent road. A backcountry patrol station, fire lookout, radio repeater, or chainsaw may be allowed in a wilderness if such use is determined, through a "Minimum Requirement Analysis," to be the "minimum requirements for administration" for the wilderness purpose.

This Annex is intended to clarify management direction and reduce disparity between Federal agencies when applying the "minimum requirements for administration" exception in managing wilderness areas. The decision to approve or deny administrative activities or uses that are the "minimum requirements for administration" remains with each unit manager. However, the Desert Managers,

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through collective communication, will build on a foundation for quality decisions that protect both the physical resources and the wilderness character of the area.

This Annex provides general guidance in determining the use of the "minimum requirements for administration" exception for activities and uses within wilderness. Other annexes, adopted by the Desert Managers, address more specifically the use of the "minimum requirements for administration" determinations for specific circumstances.

The "minimum requirements for administration" exception of the Wilderness Act applies only to agency administrative activities for wilderness. Agency activities include such things as using motorized equipment to construct trails, issuing research permits, granting contracts for facilities in wilderness, signing of MOUs for actions normally prohibited in wilderness, etc. Part A of this Annex provides the direction for managing under these circumstances and applying the "Minimum Requirement Analysis."

For activities by those who possess "existing private rights" in wilderness (e.g., a right-of-way holder), for activities specifically provided by the Wilderness Act, or for activities specifically provided by the California Desert Protection Act, Federal agencies should cooperatively seek to administer for those rights using "minimum tool" concepts. The prohibitions found in Section 4(c) of the Wilderness Act (listed previously) and the "minimum requirements for administration" exception do not apply to "existing private rights" nor to "authorized uses" within designated wilderness. Nonetheless, Federal Land Managers should attempt, when administering for such rights or uses, to minimize impacts on the wilderness resource. Part B of this Annex provides direction for applying the "minimum tool" concept and for using a "Minimum Tool Analysis" (distinct from the "Minimum Requirement Analysis" described in Part A) to administer authorized uses and accommodate existing private rights.

PART A. PRINCIPLES FOR AGENCY ADMINISTRATIVE ACTIVITIES

Part A addresses the use of the Section 4(c) "minimum requirements for administration" exception and the use of the "Minimum Requirement Analysis." This exception authorizes Federal Land Managers to employ temporary roads, use

motor vehicles, use motorized equipment or motorboats, land aircraft, employ mechanical transport, and create structures or installations only if such activities or uses are "... necessary to meet minimum requirements for the administration of the area for the purpose [emphasis added] of this [Wilderness] Act ..." It is therefore imperative that Federal Land Managers ensure that application of this exception is for that purpose. The purpose of wilderness, as defined in Section 2(a) of the Act, is "... to assure that an increasing population, accompanied by expanding settlement and growing mechanization, does not occupy and modify all areas within the United States ... leaving no lands designated for preservation and protection in their natural condition [emphasis added] ..." Furthermore, wilderness is defined in Section 2(c) of the Act as being "... an area where the earth and its community of life are untrammeled by man, where man himself is a visitor who does not remain. An area of wilderness is further defined to mean in this Act an area of undeveloped Federal land retaining its primeval character and influence, without permanent improvements or human habitation, which is protected and managed so as to preserve its natural conditions ..." Each Federal Land Manager must apply the following principles when employing the "minimum requirements for administration" exception for agency administrative activities.

- 1. Each Federal Land Manager who manages wilderness is responsible for administering the wilderness area for the purpose of the Wilderness Act.
- 2. Each Federal Land Manager is responsible for ensuring that any of the seven prohibited activities or uses occur only when necessary to accomplish the "minimum requirements for administration" of the area as wilderness. (Note: this would not apply for exceptions being made under special provisions in the 1964 Wilderness Act or CDPA or for existing private rights).
- 3. If a proposed administrative action would use one or more of the seven prohibited activities or uses identified in Section 4(c) of the Wilderness Act, a "Minimum Requirement Analysis" must be completed. This analysis will include a two step process:
 - a. Step one: An analysis of whether the "minimum requirements for administration" exception is appropriate, that is, whether the action is indeed an agency action necessary for the minimum administration of the wilderness area.

b. Step two: If the action is necessary for wilderness administration, an analysis of whether the techniques used to accomplish the action are the least degrading to wilderness characteristics.

(Note: this "Minimum Requirement Analysis" would not apply for exceptions being made under special provisions in the 1964 Wilderness Act or CDPA or for existing private rights).

- 4. If a proposed agency activity is necessary for the administration of the wilderness area for the purpose of wilderness (defined above) and involves one or more of the normally prohibited actions in 4(c) of the Wilderness Act, then the "Minimum Requirement Analysis" must determine and evaluate, at a minimum:
 - a. Whether the proposed agency activity is consistent with existing statutes, regulations, policies, and plans;
 - b. Whether the proposed agency activity would involve any prohibited use listed in Section 4(c) of the Wilderness Act;
 - c. Whether the proposed agency activity involving a prohibited act could be reasonably accomplished outside of the wilderness area(s); and
 - d. Whether the proposed agency activity could be reasonably accomplished without use of the action(s) prohibited by the Wilderness Act.
- 5. In determining what is reasonable, the Federal Land Manager will:
 - a. Identify alternatives that do not involve any of the prohibited acts in Section 4(c) of the Wilderness Act;
 - b. Not be guided solely by cost, convenience, or efficiency, but may consider time and cost effectiveness:
 - c. Analyze impacts on the wilderness characteristics (e.g., naturalness, opportunities for solitude or primitive and unconfined recreation, and other special features) and resources of each alternative, and;

- d. Determine whether the proposed agency activity, or alternatives not involving any of the prohibited acts, could safely and feasibly accomplish both the objective of the proposed activity and the objective of wilderness management.
- 6. If the decision involves a normally prohibited act under section 4(c), the accompanying "Minimum Requirement Analysis" should contain a clear and compelling justification for use of the prohibited act(s) necessary to implement the decision and necessary to manage the wilderness area.
- 7. The "Minimum Requirement Analysis" should specify the conditions that will mitigate adverse effects of the action(s) on wilderness characteristics.
- 8. A Federal Land Manager may prepare a programmatic document that covers a specific management activity involving a prohibited act in wilderness which recurs on a regular basis (e.g., maintenance of a defined hiking trail system using chainsaws).
- 9. Federal Land Managers should employ minimum impact or light-on-the-land management techniques in wilderness, even if the project (e.g., using low-level helicopter flights to corral burros) does not involve any of the prohibited acts at Section 4(c). Even though such actions are not specifically prohibited by the Wilderness Act and do not require a "minimum requirements administration" exception, agencies should still consider how best to accomplish the goal with minimal impacts to wilderness character.
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Field Manager, Lake Havasu Field Office	11/27/98 DATE/

August 21, 1998: ANNEX 8 - Application of the "Minimum Requirements for Administration" Exception (final)

Field Supervisor, Ventura Fish & Wildlife Office U.S. Fish & Wildlife Service, Region One

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Assistant Field Supervisor, Carlsbad Fish & Wildlife Office

U.S. Fish & Wildlife Service, Region One

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